

HOGAN & HARTSON
L.L.P.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

LINDA L. OLIVER
PARTNER
DIRECT DIAL (202) 637-6527

October 5, 1998

ORIGINAL

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

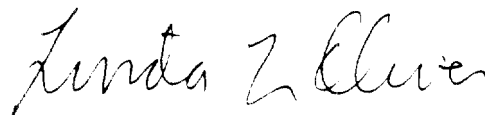
Re: CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91, and CCB/CPD No. 98-15, and RM-9244

Dear Ms. Salas:

Attached for filing in the referenced dockets, on behalf of Qwest Communications Corporation ("Qwest"), are the original and four copies of Qwest's Opposition to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell and the Petition for Partial Reconsideration or, Alternatively, For Clarification, filed by the Bell Atlantic Telephone Companies of the Commission's August 7, 1998 Memorandum Opinion and Order in the captioned proceedings.

Please call me if you have any questions.

Respectfully submitted,



Linda L. Oliver
Counsel for Qwest Communications
Corporation

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)

Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)

CC Docket No. 98-147

Petition of Bell Atlantic Corporation)
For Relief from Barrier to Deployment of)
Advanced Telecommunications Services)

CC Docket No. 98-11

Petition of US West Communications Inc.)
For Relief from Barrier to Deployment of)
Advanced Telecommunications Services)

CC Docket No. 98-26

Petition of Ameritech Corporation to)
Remove Barriers to Investment in)
Advanced Telecommunications Technology)

CC Docket No. 98-32

Petition of the Alliance for Public)
Technology Requesting Issuance of Notice)
of Inquiry and Notice of Proposed)
Rulemaking to Implement Section 706 of)
the 1996 Telecommunications Act)

CCB/CPD No. 98-15
RM 9244

Petition of the Association for Local)
Telecommunications Services (ALTS) for a)
Declaratory Ruling Establishing Conditions)
Necessary to Promote Deployment of)
Advanced Telecommunications Capability)
Under Section 706 of the)
Telecommunications Act of 1996)

CC Docket No. 98-78

Southwestern Bell Telephone Company,)
Pacific Bell, and Nevada Bell Petition for)
Relief from Regulation Pursuant to Section)
706 of the Telecommunications Act of 1996)
and 47 U.S.C. § 160 for ADSL)
Infrastructure and Service)

CC Docket No. 98-91

**OPPOSITION OF QWEST COMMUNICATIONS CORPORATION
TO PETITIONS FOR RECONSIDERATION**

Qwest Communications Corporation ("Qwest") hereby respectfully submits its opposition to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell ("SBC") and the Petition of the Bell Atlantic Telephone Companies ("Bell Atlantic") for Partial Reconsideration or Alternatively, For Clarification, of the Commission's August 7, 1998 Memorandum Opinion and Order in the captioned proceedings. 1/

The petitioners challenge the Advanced Services Order on two grounds. First, they argue that the Commission's requirement that incumbent local exchange carriers ("ILECs") are required to provide access to loops "conditioned" for use with xDSL electronics violates the Eighth Circuit's decision in Iowa Utilities Board v. FCC. 2/ Specifically, the petitioners argue that the mandated provision to competitors of such "conditioned" loops would constitute the required provision of a "superior in quality" facility to a requesting carrier, in alleged violation Iowa Utilities Board. Second, the petitioners challenge the Commission's view that Section 706 of the 1996 Telecommunications Act, 47 U.S.C. § 157 note, does not

1/ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic Corp., et al., CC Docket Nos. 98-147, et al., FCC 98-188 (released August 7, 1998) ("Advanced Services Order").

2/ Iowa Utilities Board v. FCC, 120 F.3d 753, 812-13 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998) ("Iowa Utilities Board").

constitute an independent grant of forbearance authority to the Commission. The Commission should reject both grounds for reconsideration for the reasons discussed below.

I. THE REQUIREMENT TO PROVIDE ACCESS TO CONDITIONED LOOPS.

The petitioners lack any basis for challenging the Commission's decision requiring ILECs to provide competitors with access to loops conditioned to be attached to xDSL electronics. First, the requirement that ILECs provide access to conditioned loops was established long ago in the Commission's August 1996 Local Competition Order. 3/ The petitioners should have sought reconsideration or judicial review of the Local Competition Order on this point. The Local Competition Order is now final and cannot be subject to reconsideration or further judicial review. The petitioners are barred from challenging it now, on reconsideration of the Advanced Services Order. 4/

The petitioners attempt to dodge this problem by asserting that the conditioned loops requirement violates the Eighth Circuit's decision in Iowa

3/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325, released August 8, 1996, 11 FCC Rcd 15499, at para. 380 (1996), aff'd in part and rev'd in part, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998) ("Local Competition Order").

4/ The Commission itself made clear in the Advanced Services Order that the requirement to provide access to conditioned loops had already been established in the August 1996 Local Competition Order. Advanced Services Order at para. 152, citing Local Competition Order at paras. 380-82.

Utilities Board, which invalidated the Commission's "sur adopted in the same Local Competition Order that esta. requirement. 5/ The problem with this argument is that the condition a loop so that it can be combined with xDSL electronics constitute the provision of a "superior in quality" facility or functional. simply involves removing certain impediments in the existing copper loop to that loop to be used with advanced electronics that are provided by the competitor. In fact, the copper loop conditioned for xDSL, when provided to a competitor without xDSL electronics, is actually not capable, without xDSL electronics, of providing service in any way superior to the conventional local exchange service provided by the ILEC over a loop that has not been conditioned. Moreover, as the FCC made clear, the ILECs are not required to do any more than what is "technically feasible." 6/

In any case, both Bell Atlantic and SBC (along with the other RBOCs and GTE) have already begun to provide their own xDSL services, so even if the prohibition on requiring a "superior in quality" facility did apply in the context of conditioned loops, the petitioners (and the other RBOCs and GTE, at a minimum)

5/ Iowa Utilities Board, 120 F 3d 753, 812-13

6/ Advanced Services Order at para. 152, citing Local Competition Order at para. 382.

would have to provide competitors with access to those conditioned loops, since they are already providing such access to themselves ^{7/}

It should be apparent that the petitioners' real goal here is to be able to stop competitors from providing xDSL services over existing copper ILEC loops until the ILECs themselves are ready to provide xDSL services. Taken to its extreme, the petitioners' argument would permit an ILEC to refuse to condition any copper loop until the ILEC itself had already decided to provide xDSL services over that very loop. Of course at that point, the competitor would have to win the customer away from the ILEC, because the customer would by then, by definition, be an ILEC advanced services customer.

At bottom, the petitioners' complaint is not really about having to prepare or "condition" copper loops -- an activity for which they would be

^{7/} All of the RBOCs and GTE have announced deployment of xDSL technology in their regions. See "Bell Atlantic's New ISP Partnership Program Will Bring Customer Choice to the High-Speed Internet Access Market," Bell Atlantic Press Release, September 30, 1998 (announcing rollout of ADSL services in at least four states and the District of Columbia by early 1999); "Bell Atlantic to Offer High-Speed Links to Net," Washington Post, June 4, 1998, at E3; "SBC's Pacific Bell Unit Unveils ADSL Plans, Files Pricing Tariff," Telecommunications Reports, June 1, 1998, at 34 (SBC); "Bells, GTE, and Computer Giants Say ADSL Working Group Will Speed Deployment," Telecommunications Reports, February 2, 1998, at 23-24 (US West); "BellSouth Plots Ambitious ADSL Plan," Multichannel News, May 25, 1998, at 1 (BellSouth and Ameritech); News Release, "BellSouth Announces Aggressive 30 Market Roll-Out of Ultra-High Speed BellSouth.Net FastAccess ADSL Internet Services," May 20, 1998, at www.bellsouthcorp.com; "GTE Jumps Into xDSL Game as UAWG Works on Standard," Telecommunications Reports, April 20, 1998, at 18; "GTE to Offer Ultra-Fast Internet Access," April 13, 1998. Announcement on GTE website, www.gte.com/g/news/adsl041398.html.

compensated by the requesting carrier. ^{8/} The ILECs' real complaint is that they cannot block CLECs from employing ILEC unbundled loops to provide advanced services in competition with the ILECs. If the Commission were to grant reconsideration, the ILECs would be able to completely block any competitive provision of xDSL services over copper loops until the ILECs were ready themselves to roll out the service. This obviously would leave consumers, particularly those without other options for obtaining broadband services, with no ability to reap the benefits of advanced technology.

It also is telling that the ILECs demanded, in the very same forbearance petitions, that the Commission exercise its forbearance authority to permit them to refuse to competitors access to loops *equipped* with xDSL electronics. If the ILECs had succeeded on that point as well, ^{9/} they could have accomplished a total lockout of competitors from the advanced services market, by

^{8/} Bell Atlantic complains that consumers will have to pay for its activities in preparing loops for requesting carriers. Bell Atlantic Petition at 5. This complaint is entirely unfounded. The Commission has made it clear, both in the Local Competition Order and in the Advanced Services Order, that "[t]he requesting carrier bears the cost of such conditioning." Advanced Services Order at para. 53 n.98, citing Local Competition Order at para. 382.

^{9/} The Commission squarely rejected this ILEC argument in the Advanced Services Order, where it held that the Act's market-opening provisions, including the network element provisions of Section 251(c)(3), apply equally to advanced technologies such as xDSL. Advanced Services Order at para. 59 ("the facilities and equipment used to provide advanced services are network elements subject to the obligations in Section 251(c)(3)").

preventing these competitors from employing *any* ILEC loops to deploy competitive advanced services. 10/

II. SECTION 706 AS AN INDEPENDENT GRANT OF FORBEARANCE AUTHORITY.

The petitioners also seek to overturn the Commission's decision that it Section 706 does not confer on the Commission additional authority to forbear in circumstances under which Section 10 of the Act 47 U.S.C. § 160, would not permit it to forbear. The petitioners advance nothing new in the way of arguments to support their request, instead merely parroting the arguments they made in their forbearance petitions. As the Commission correctly concluded in the Advanced Services Order, the Commission plainly lacks the legal authority to forbear under Section 706 when it cannot justify such forbearance pursuant to the specific test set forth in the Act's forbearance section, Section 10

First, Section 706 by its own terms is not an independent grant of forbearance authority. Rather, it merely directs the Commission to use the forbearance authority that is specifically granted in Sections 10 and 332 in order to promote deployment of advanced services. This is clear from the context: for example, Section 706 also directs the Commission to use price cap regulation

10/ As Qwest discussed in detail in its comments on the Advanced Services NPRM, competitors seeking to provide broad-based competitive advanced services need access to loops that are already equipped with ILEC xDSL electronics and ILEC interoffice packet transport and switching, as well as requiring the option of employing ILEC conditioned loops. See Comments of Qwest Communications Corporation, filed September 25, 1998, in CC Docket No. 98-147, at 63-66.

toward the same end, even though the FCC's authority to adopt price cap regulation for interstate telecommunications service was well-settled when the 1996 Act was enacted. ^{11/}

Moreover, unlike the detailed standards governing the specific forbearance authority provided in Sections 10 and 332, Section 706 of the Act contains no substantive standards governing when forbearance would be required or permitted. ^{12/} Congress clearly expressed its intent in Section 10(d) that the Commission may not forbear from enforcing Sections 251(c) and 271 until those sections are fully implemented. When it does consider whether to forbear from such key pro-competitive provisions, it must evaluate the state of the market at the time the request for forbearance is made, and make all the factual and policy determinations required by Section 10's specific three-part test.

There also is no basis for the FCC to allow the RBOCs into the interLATA business before they have met the requirements of Section 271. Congress made it clear that regardless of the nature of the interLATA services, the RBOCs must meet certain requirements before being allowed to provide them. The fact that RBOCs cannot offer these services today reflects a considered and balanced policy choice that is at the heart of the 1996 Act: RBOC entry into interLATA markets should be contingent on full opening of local markets in order to

^{11/} See National Rural Telecom Assn v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

^{12/} 47 U.S.C. § § 160(a), 332, 157n.

give the RBOCs a powerful incentive to open their local networks to competitors.

The wisdom of that choice applies with equal force to the interLATA services described in the petitions for forbearance that the Commission denied in the Advanced Services Order. The construction of interLATA networks for data purposes is still construction of interLATA networks. The Commission needs to hold tight to the carrot of interLATA entry if it is to see the benefits of the Act realized.

Likewise, Section 251(c)(3) of the Act does not contemplate that the Commission will freeze the RBOC network in time, allowing the RBOCs to deny access to the network simply because it evolves with technological change, as the Commission recognized elsewhere in the Advanced Services Order.^{13/} Instead, that section gives requesting carriers access to all the "features, functions, and capabilities" of the network. 47 U.S.C. § 153(29). Indeed, Congress understood that telecommunications networks are dynamic and fast-changing, and that many different technologies can be used to provide the same services. If Congress had intended to draw lines around services or network facilities or technologies, it would have done so.

In sum, the RBOCs' proposed end run around the Act's statutory forbearance framework should not be countenanced, and their petitions for reconsideration must be denied.

^{13/} Advanced Services Order at para. 57

CONCLUSION

For the reasons given, the Commission should deny the petitions for reconsideration.

Respectfully submitted,

QWEST COMMUNICATIONS
CORPORATION

By: 

Joseph T. Garrity
Senior Director,
Legal, Regulatory and
Legislative Affairs and
Corporate Secretary
Qwest Communications
Corporation
555 17th Street
Denver, CO 80202
(303) 992-1621

Peter A. Rohrbach
Linda L. Oliver
Hogan & Hartson, L.L.P.
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600

Counsel for Qwest Communications
Corporation

October 5, 1998

CERTIFICATE OF SERVICE

I, Barbara E. Clocker, hereby certify that on this 5th day of October, 1998, a copy of the attached Opposition of Qwest Communications Corporation to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell and the Petition of the Bell Atlantic Telephone Companies for Partial Reconsideration or, Alternatively, For Clarification, of the Commission's August 7, 1998 Memorandum Opinion and Order in CC Docket Nos. 98-147, et al, was hand delivered or sent by First Class Mail (where indicated) to the parties listed below


Barbara E. Clocker

James D. Ellis*
Robert M. Lynch*
Durward D. Dupre*
Darryl W. Howard*
Southwestern Bell Telephone Company
One Bell Center, Room 3528
St. Louis, MO 63101

Mark L. Evans
Sean A. Lev
Rebecca A. Beynon
Kellogg, Huber, Hanson, Todd, & Evans
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005

Lawrence W. Katz (via facsimile)
Michael E. Glover
Bell Atlantic
1320 N. Courthouse Road
Eighth Floor
Arlington, VA 22201

M. Robert Sutherland*
Stephen L. Earnest
BellSouth Corporation
1155 Peachtree Street, N.W., Suite 1700
Atlanta, GA 30309

Thomas Gann*
Sun Microsystems
1300 I Street, N.W.
Suite 420 East
Washington, D.C. 20005

Cherie Kiser*
Michael Bressman
Mintz, Levin
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004

Joel Bernstein*
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Suite 650 East
Washington, D.C. 20005

Russell Staiger*
BMDA
400 East Broadway Avenue
Bismarck, ND 58501

*indicates via First Class Mail

John T. Lenahan*
Ameritech Corporation
2000 West Ameritech Center Drive
Room 4H84
Hoffman Estates, IL 60196

William T. Lake*
John Harwood
Jonathan Frankel
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

Marueen Lewis*
Alliance for Public Technology
901 15th Street, N.W., Suite 230
Washington, D.C. 20037

J. Jeffrey Oxley*
Assistant Attorney General
Minnesota Dept. of Public Service
1200 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

William Rooney, Jr.*
Counsel for Global NAPs, Inc.
Ten Winthrop Square
Boston, MA 02110

Cheryl Parrino*
Public Service Commission of Wisconsin
P. O. box 7854
Madison, WI 53707-7854

G. Richard Klein*
Indiana Utility Regulatory Commission
302 W. Washington, Suite E-306
Indianapolis, IN 46204

Randall Lowe*
J. Todd Metcalf
Piper & Marbury
1200 19th Street, N.W.
Washington, D.C. 20006

Blossom Peretz*
NJ Division of the Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, NJ 07101

A. Daniel Sheinman*
Laura Ipsen
Cisco Systems
170 West Tasman Drive
San Jose, CA 95134

Carol Weinhaus*
Telecommunications Industries Analysis
Project
Public Utility Research Center
Meeting House Offices
121 Mount Vernon Street
Boston, MA 02108

John Dodge*
Cole, Raywid & Beverman
1919 Pennsylvania Ave., N.W., 2nd Floor
Washington, D.C. 20006

Mitchell Lazarus*
Fetcher, Heald
1300 North 17th Street
Arlington, VA 22209

Aliceann Wolhbruck*
National Association of Development
Organizations
444 North Capitol Street, N.W., Suite 630
Washington, D.C. 20001

Frank Simone*
AT&T
1120 20th Street, N.W., Suite 1200
Washington, D.C. 20036

Richard Taranto*
Farr & Taranto
Bell Atlantic
1850 M Street, N.W., Suite 1000
Washington, D.C. 20036

Bartlett L. Thomas*
James J. Valentino*
Mintz Levin Cohn Ferris Glovsky &
Popeo
701 Pennsylvania Ave., N.W., Suite 900
Washington, D.C. 20004

Christopher W. Savage*
Jame F. Ireland*
Cole Raywid & Braverman
1919 Pennsylvania Ave., N.W., Suite 200
Washington, D.C. 20006

Henry Geller*
Alliance for Public Technology
901 15th Street, N.W., Suite 230
Washington, D.C. 20005

National Association of Commissions for
Women*
1828 L Street, N.W., Suite 250
Washington, D.C. 20036

United Homewoners Association*
1511 K Street, N.W.
Washington, D.C. 20005

National Hispanic Council on Aging*
2713 Ontario Street, N.W.
Washington, D.C. 20009

National Association of Development
Organizations*
444 North Capitol Street, N.W., Suite 630
Washington, D.C. 20001

Colleen Boothby*
Levin Blaszak Block and Boothby
2001 L Street, N.W., Suite 900
Washington, D.C. 20036

World Institute on Disability*
510 16th Street, Suite 100
Oakland, CA 94612

Terrence K
Level 3 C
3555 Fr
Omaha

David N.
WorldCom 1.
1120 Connecticut
Washington, D.C.

Randall B. Lowe*
Piper & Marubuiry
1200 19th Street, N.W.
Washington, D.C. 20036

Richard D. Marks*
Vinson & Elkins
1455 Pennsylvania Ave., N.W., Suite 700
Washington, D.C. 20004

Thomas M. Koutsky*
Assistant General Counsel
COVAD Communications Company
35670 Bassett Street
Santa Clara, CA 95054

George Vradenburg III*
America Online Inc.
1101 Connecticut Ave., N.W., Suite 400
Washington, D.C. 20036

Jeffrey A. Campbell*
Stacey Stern Albert
Compaq Computer Corporation
1300 I Street, N.W.
Washington, D.C. 20005

Howard J. Symons*
Michelle M. Mundt
Mintz Levin Cohn Ferris Glovsky & Popeo
701 Pennsylvania Ave., N.W., Suite 900
Washington, D.C. 20004

*indicates via First Class Mail

Gordon M. Ambach*
Executive Director
Council of Chief State School Officers
One Massachusetts Ave., N.W., Suite 700
Washington, D.C. 20036

Mark J. Tauber*
Teresea S. Werner*
Pioper & Marbury
1200 19th Street, N.W., Seventh Floor
Washington, D.C. 20036

Cedar City/Iron County Economic Dev.*
110 N. Main Street
P. O. Box 249
Cedar City, UT 84720

Dr. David Lyteld*
NYSERNET Inc.
125 Elwood Davis Road
Syracuse, NY 13212

Joseph W. Waz Jr.*
Comcast Corporation
1500 Market Street
Philadelphia, PA 19102

D. Robert Webster*
Bamberger & Feibleman
54 Monument Circle, Suite 600
Indianapolis, IN 46204

James R. Coltharp*
Senior Director of Public Policy
Comcast Corporation
1317 F. Street, N.W.,
Washington, D.C. 20004

Albert H. Kramer*
Michael Carowitz*
Dickstein Shapiro Morin & Oshinsky
2101 L Street, N.W.
Washington, D.C. 20037

Chapin Burks*
St. George Area Chamber of Commerce
97 East St. George Blvd.
St. George, UT 84770

Thomas Sugrue*
Joel Bernstein*
Halprin Temple Goodman & Sugrue
1100 New York Ave., N.W.
Suite 650 East
Washington, D.C. 20005

Christopher J. White*
Deputy Assistant Ratepayer Advocate
State of New Jersey
31 Clinton Street, 11th Floor
Newark, NJ 07101

John Hanes*
House Corporation
Wyoming State Legislature
213 State Capitol
Cheyenne, WY 82008

Jack Crews*
Cheyenne Leads
1720 Carey Ave., Suite 401
P. O. Box 1045
Cheyenne, WY 82003-1045

C. Bennett Lewis*
Executive Director
Aurora Chamber of Commerce
3131 South Vaughnway, Suite 426
Aurora, CO 80014

Robert D. Boyse*
Laramie Economic Development Corp.
1482 Commerce Drive, Suite A
Laramie, WY 82070

Karen Peltz Strauss*
814 Thayer Ave.
Silver Spring, MD 20910-4500

John Windhuasen*
Competition Policy Institute
1156 15th Street, N.W., Suite 310
Washington, D.C. 20005

Scott Truman*
Utah Ruaral Development Council
Administration Building 304
southern Utah University
Cedar City, UT 84720

Thomas J. Dunleavy*
New York PSC
Three Empire State Plaza
Albany, NY 12223

Gerald Stevens-Kittner*
CAI Wireless Suystems, Inc.
2101 Wilson Blvd., Suite 100
Arlington, VA 22201

William J. Rooney Jr.*
Global Naps Inc.
Ten Whinthrop Square
Boston, MA 02110

Russell Staiger*
Bismark/Mandan Development Assn.
400 E. Broadway Ave., Suite 417
Bismark, ND 58502

Joseph K. Witmer*
Pennsylvania PUC
Commonwealth Ave. & North St.
Room 116
P. O. Box 3265
Harrisburg, PA 17105

Issue Dynamics Inc.*
901 15th Street, Suite 230
Washington, D.C. 20005

Ellen Deutsch*
Senior Counsel
Electric Lightway Inc.
8100 NE Parkway Drive, Suite 200
vancouver, WA 98662

National Association of Community
Action Agencies*
1100 17th Street, N.W., Suite 500
Washington, D.C. 20036

Thomas Hatch*
House of Representatives
State of Utah
P. O. Box 391
Panguitch, UT 84759

Economic Strategy Institute*
1401 H Street, N.W., Suite 750
Washington, D.C. 20005

Electric Lightwave Inc.*
Legal Counsel
4400 77th Ave.
Vancouver, WA 98662

Gene Vuckovich*
Montana Rural Development Partners
115 E. Seventh Street, Suite 2A
Anaconda, MT 59711

Barbara A. Dooley*
Commercial Internet eXchange Assoc.
1041 Sterling Road, Suite 104A
Herndon, VA 20170

Kevin Timpane*
Firstworld Communications Inc.
9333 Genessee Ave., Suite 200
San Diego, CA 92121

Cindy Z. Schonhaut*
ICG Communications Inc.
161 Inverness Drive
Englewood, CO 80112

David J. Newburger*
Newburger & Vossmeier
One Metropolitan Square, Suite 2400
St. Louis, MO 63102

*indicates via First Class Mail

Albert H. Kramer*
Michael Carowitz
Dickstein Shapiro Morin & Oshinsky
2101 L Street, N.W.
Washington, D.C. 20037

W Scott McCollough*
McCollough and Associates
1801 N. Lamar, Suite 104
Austin, TX 78701

Frank Michael Panek*
Ameritech
2000 W. Ameritech Center Drive
Room 4H84
Hoffman Estates, IL 60196

Dana Frix*
Kemal M. Hawa
Swidler & Berlin
3000 K Street, N.W., Sute 300
Washington, D.C. 20007

Steven M. Hoffer*
Coalition Representing Internet Service
Provider
95 Mariner Green Dr.
Corte Madera, CA 94925

Marie Guillory*
National Telephone Cooperative Assoc.
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

Peter Arth Jr.*
William N. Foley
Mary Mack Adu
505 Van Ness Ave.
San Francisco, CA 94012

Robert B. McKenna*
US West Communications Inc.
1020 19th Stret, N.W., Suite 700
Washington, D.c. 20036

Angela Ledford*
Keep America Connected!
P. O. Box 27911
Washington, D.C. 20005

Competitive Pricing Divison*
Federal Communications Commission
1919 M Stret, N.W., Room 518
Washington, D.C. 20554

Charles D. Gray*
NARUC
1100 Pennsylvania Ave., Suite 608
P. O. Box 684
Washington, D.C. 20044

Mary McDermott*
Linda Kent
United States Telephone Assoc.
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Eric R. Olbeter*
Economic Strategy Institute
1401 H Street, N.W., Suite 750
Washington, D.C. 20005

Dr. Janet K. Poley
University of Nebraska
C218 animal Sciences
P. O. Box 830092
Lincoln, NE 68583-0952

Rodney L. Joyce*
J. Thomas Nolan
Shook, Hardy & Bacon
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(for Network Access Solutions, Inc.)

Charles C. Hunter*
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

David W. Zesiger, Executive Director*
Donn T. Wonnell
Independent Telephone &
Telecommunications Alliance
1300 Connecticut Ave., N.W., Suite 600
Washington, D.C. 20036

R. Gerard Salemmé*
Daniel Gonzalez
Cathleen A. Massey
NEXTLINK Communications, Inc.
1730 Rhode Island Ave., N.W., Suite 1000
Washington, D.C. 20036

Riley M. Murphy*
e.spire Communications, Inc.
133 National Business Pkwy., Suite 200
Annapolis Junction, MD 20701

Brad E. Mutschelknaus*
Ross A. Buntrock
Kelley Drye & Warren
1200 19th Street, N.W., 5th Floor
Washington, D.C. 20036

Lawrence G. Malone*
New York Department of Public Service
Three Empire State Plaza
Albany, NY 12223

Catherine R. Sloan*
Richard L. Fruchterman III
Richard S. Whitt
David N. Porter
WorldCom, Inc.
1120 Connecticut Ave., N.W., Suite 400
Washington, D.C. 20036

Ronald L. Plessner*
Mark J. O'Connor
Stuart P. Ingis
Piper & Marbury
1200 Nineteenth Street, N.W., 7th Floor
Washington, D.C. 20036
(for Commercial Internet Exchange
Assoc.)

Gail L. Polivy*
GTE Service Corporation
1850 M Street, N.W.
Washington, D.C. 20036

Kecia Boney*
Dale Dixon
Lisa B. Smith
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Anthony C. Epstein*
Jenner & Block
601 Thirteenth Street, N.W.
Washington, D.C. 20005

Kevin Sievert*
Glen Grochowski
MCI Communications
400 International Parkway
Richardson, TX 75081

Ava B. Kleinman*
Mark C. Rosenblum
AT&T Corporation
295 North Maple Avenue
Room 3252J1
Basking Ridge, NJ 07920

Leon M. Kestenbaum*
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington D.C. 20036

J. Manning Lee*
Teresa Marrero
Teleport Communications Group, Inc.
2 Teleport Drive, Suite 300
Staten Island, NY 10311

*indicates via First Class Mail

Russell Blau*
Dana Frix
Jonathan D. Draluck
Swidler & Berlin
3000 K Street, N.W., Suite 300
Washington, D.C. 20006
(for Hyperion Telecommunications and
USN Communications, Inc.)

Lawrence E. Sarjeant*
Linda Kent
Keith Townsend
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Jonathan Jacob Nadler*
Brian J. McHugh
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
Box 407
Washington, D.C. 20044
(for the Information Technology
Association of America)

M. Robert Sutherland*
Stephen M. Klimacek
BellSouth Corporation
1155 Peachtree Street, N.E.
Suite 1700
Atlanta, GA 30309-3610

James D. Ellis*
Robert M. Lynch
Durward D. Dupre
Darryl W. Howard
SBC Communications, Inc.
One Bell Plaza, Rm. 3703
Dallas, TX 75202

Jeffrey Blumenfeld*
Christy Kunin
Frank V. Paganelli
Blumenfeld & Cohen
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
(counsel for Rhythms NetConnections,
Inc.)

Steven Gorosh*
NorthPoint Communications, Inc.
222 Sutter Street
San Francisco, CA 94108

Russell M. Blau*
Richard M. Rindler
Tamar E. Finn
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(counsel for Focal Communications
Corporation, Hyperion
Telecommunications, Inc., KMC Telecom
Inc. and McLeodUSA Incorporated)

Jonathan Canis*
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
(counsel for Competitive
Telecommunications Association)

Genevieve Morelli*
Competitive Telecommunications
Association
1900 M Street, NW, Suite 800
Washington, D.C. 20036

Richard J. Metzger*
Emily M. Williams
Association for Local Telecommunications
Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

*indicates via First Class Mail

Riley M. Murphy*
James C. Falvey
American Communications Services, Inc.
131 National Business Parkway,
Suite 100
Annapolis Junction, MD 20701

Brad E. Mutschelknaus*
Edward A. Yorkgitis, Jr
John J. Heitman
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
(for ACSI)

Robert M. McKenna*
Jeffrey A. Brueggeman
US WEST, Inc.
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

William E. Kennard, Chairman
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

Susan Ness, Commissioner
Federal Communications Commission
1919 M St., N.W., Room 832
Washington, D.C. 20554

Harold Furchtgott-Roth, Commissioner
Federal Communications Commission
1919 M St., N.W., Room 802
Washington, D.C. 20554

Michael K. Powell, Commissioner
Federal Communications Commission
1919 M St., N.W., Room 844
Washington, D.C. 20554

Gloria Tristani, Commissioner
Federal Communications Commission
1919 M St., N.W., Room 826
Washington, D.C. 20554

John Nakahata, Chief of Staff
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

Thomas Power, Legal Advisor to
Chairman William E. Kennard
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

James L. Casserly
Senior Legal Advisor to
Commissioner Susan Ness
Federal Communications Commission
1919 M St., N.W., Room 832
Washington, D.C. 20554

Kevin Martin, Legal Advisor to
Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M St., N.W., Room 802
Washington, D.C. 20554

Kyle D. Dixon, Legal Advisor to
Commissioner Michael Powell
Federal Communications Commission
1919 M St., N.W., Room 844
Washington, D.C. 20554

Paul Gallant, Legal Advisor to
Commissioner Gloria Tristani
Federal Communications Commission
1919 M St., N.W., Room 826
Washington, D.C. 20554

John Berresford
Senior Antitrust Attorney
Industry Analysis Division
Common Carrier Bureau
Federal Communications Commission
2033 M Street, N.W., Room 399-A
Washington, D.C. 20554

*indicates via First Class Mail

Kathryn Brown, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

Lawrence Strickling, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

James Schlichting, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

Ruth Milkman, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

Carol Matthey, Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Michael Pryor, Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Melissa Newman, Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Linda Kinney
Policy Division

Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Lisa Sockett
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Jason Oxman
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Dale Hatfield, Chief Technologist
Office of Plans & Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Robert Pepper
Chief, Office of Plans & Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Jonathan Weinberg
Office of Plans & Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

International Transcription Service
Federal Communications Commission
1231 20th Street, N.W.
Washington, D.C. 20554